IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 416 of 2004

Ravinder Singh S/o Pratap Singh
R/o Gas Godam Road
Kusum Khera Haldwani
P.S. Haldwani
District Nainital ……Applicant

Versus

1. State of Uttaranchal
2. Civil Judge (Junior Division)
   Rudrapur
   District Udham Singh Nagar
3. Chief Judicial Magistrate, Rudrapur
   District Udham Singh Nagar
4. Sarvesh Kumar S/o Ramesh Chandra
   R/o Awas Vikas Rudrapur
   House No. B- 380
   Ed-Blue-S Tehsil Kiccha
   District Udham Singh Nagar ….Opposite Party

Sri Rajeev Sharma learned counsel for the applicant
Sri Vipul Sharma learned counsel for the opposite party No. 4.
Sri K.S. Rautela learned counsel for the State.

Hon'ble B.C. Kandpal, J.

1. This is the criminal misc. application under Section 482 Cr.P.C. filed by the petitioner for quashing the proceedings in Criminal Case No. 258 of 2004 Sarvesh Kumar Vs. Raveendra Singh & others under Sections 406, 420 of I.P.C. pending in the court of Civil Judge (J.D.)/ Judicial Magistrate, Rudrapur, District Udham Singh Nagar.

2. The facts of the case are that the opposite party No. 4- Sarvesh Kumar filed a complaint alleging therein that a truck bearing No. UP21 - 2056 Model No. 1985 was purchased by the complainant- Survesh Kumar with an agreement of partnership with Ravendra Singh (petitioner) from one Vinod Chabra. On 15.10.2001, petitioner borrowed Rs. 35,000/- (Rupees Thirty five thousand only) for purchasing the said truck in partnership of opposite party No. 4- Survesh Kumar with the condition that the petitioner shall return the said amount of Rs. 35,000/- till 15.12.2001 to opposite party No. 4- Survesh Kumar. It is contended

that the promissory note was also executed in favour of Survesh Kumar by the petitioner.

3. It is further averred in the petition that on 29.11.2001 at about 10 a.m., the petitioner with other persons forcibly tried to take away the said vehicle when the opposite party No. 4- Sarvesh Kumar opposed the action of the petitioner by restraining him to take away the said vehicle, the accused Ravinder Singh extended threatening and refuse to pay the debt of Rs. 35,000/- (Rupees Thirty five thousand only). It has further averred in the complaint that the petitioner Ravinder Singh, later on tried to transfer the registration of the vehicle in the name of his son- Jogender Singh. The complainant made a report before the police station but the petitioner- Ravinder Singh succeeded in getting the registration of the said vehicle transferred in the name of his son- Joginder Singh.

4. The opposite party No. 4 thereafter filed a complaint before the court of Chief Judicial Magistrate, Rudrapur, District Udham Singh Nagar and got his statement under Section 200 Cr.P.C. The statement of the witnesses were also recorded under Section 202 Cr.P.C. Thereafter, learned C.J.M. vide order dated 05.01.2004 summoned the accused i.e. petitioner, under Section 406 and 420 I.P.C.

5. The record further reveals that the petitioner, thereafter did not appear before the court. Therefore, on 09.03.2004 bailable warrants were issued against him. The court below thereafter again issued bailable warrants on 28.03.2004 against the petitioner on account of his non appearance before the court.

6. The petitioner has challenged the summoning order as well as the subsequent orders issuing bailable warrants against him and also prayed that the entire proceedings of criminal case No. 258 of 2004 Sarvesh Kumar Vs. Ravinder Singh & others pending before the court below be quashed.

7. The opposite party No. 4- Sarvesh Kumar has filed the counter affidavit denying the allegations made in the petition.

8. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 4 as well as learned A.G.A. and perused the record.

9. Learned counsel for the petitioner has argued that it is a case of civil nature and the agreement dated 15.10.2001 which has been filed as annexure 7 to this petition clearly shows that there is sufficient material to show that this matter relates to civil liability. It has also been submitted that the evidence on record show that there was no mens rea on the part of the accused/petitioner at the very beginning when a transaction was entered into.

10. Perusal of the record shows that it is not a case where the proceedings pending before the court below should be quashed. In case, if the averments in the complaint prima facie makes out a case for investigation then there is no ground to quash the complaint on one or two ingredients of the offence have not been stated in detail .

11. I have gone through the summoning order passed by the court below and I do not find any ground to interfere in the same. The contention raised by the learned for the petitioner relates to the fact which could only be assessed and examined by the trial court. It is the settled law that no detailed reason in summoning order are needed and the proceedings could not be disturbed on that count alone.

12. The Hon'ble Apex Court in catena of decision has clearly observed that:-

> *"the power for quashing the criminal proceeding should be exercised very sparingly and with circumspection and in the rarest of rare cases, that the court will not be justified in embarking upon the enquiry at to the reliability or genuineness or otherwise of the allegations made in the complaint."*

13. It may be that the facts narrated in the present complaint would as well reveal a commercial or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. It is too premature a stage for this Court to step in and install the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of commercial offence is involved.

14. Furthermore, it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state is so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint, the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details.

15. After the close scrutiny of the record of this case, I come to the conclusion that this petition is devoid of any merit.

16. Accordingly, the petition is dismissed.

17. The order dated 30.09.2004 passed by this Court, staying the further proceedings, pending before the court concerned, stands vacated.

18. However, the trial court is directed to decide the criminal case expeditiously as early as possible

(B.C. Kandpal, J.)

07.04.2005
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